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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 384

TUSCARORA NATION OF INDIANS, also known as TUSCARORA INDIAN NATION,

Petitioner,

v.

POWER AUTHORITY OF THE STATE OF NEW YORK, ROBERT MOSES, and SUPERINTENDENT OF PUBLIC WORKS OF THE STATE OF NEW YORK, JOHN W. JOHNSON,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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The petitioner herein seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled case on July 24, 1958, as modified by order dated August 26, 1958.

The respondent, John W. Johnson, Superintendent of Public Works of the State of New York, has appealed from the same judgment pursuant to 28 U. S. Code § 1254(2) and a jurisdictional statement has been submitted to this Court.

In the jurisdictional statement it is demonstrated:*

* The demonstration will be amplified further on the argument in this Court if jurisdiction is noted.

(a) That the Indian Intercourse Act (25 U. S. Code § 177) and the Civil Jurisdiction Act (25 U. S. Code § 233) do not inhibit the exercise of the sovereign power of eminent domain by the State of New York;

(b) That the foregoing statutes could not, in any event, be held applicable to the State of New York without unconstitutionally impairing the State's sovereignty;

(c) That the procedural method utilized by the State in effecting the acquisition of title was not repugnant to any provision of the federal constitution or of a federal statute.

If this Court notes jurisdiction and if, thereafter, the above contentions of the State should be upheld by this Court, all of the arguments advanced by the petitioner in support of its application for a writ of certiorari are irrelevant and moot. The granting of the instant application for a writ of certiorari is inconsistent with the noting of jurisdiction of the State's appeal.

The petition for a writ of certiorari should be denied.

Albany, N. Y., September 26, 1958.

Respectfully submitted,

LOUIS J. LEFKOWITZ,
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of New York,
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John W. Johnson, Superintendent
of Public Works of the State of
New York.

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